

Appeal No. 01(f)-11-09/2021 (W)

Ketua Pengarah Hasil Dalam Negeri v Bar Malaysia

Broad Grounds

- (1) This is our unanimous decision.

- (2) The Appellant has made it clear that the purpose of their invoking section 142(5)(b) is for the purpose of ‘auditing’ the income received by a law firm. In doing so, the Inland Revenue has equated a client’s account of a law firm, with the income received by a law firm. It appears to us that the Inland Revenue has failed to comprehend that the contents of a client’s account comprise monies and documents belonging to a client and made or given in the course of employing a solicitor for services. In short, the contents of a client’s account belong to the client of the solicitor and NOT the solicitors themselves.

- (3) Therefore, the question that arises is why is it necessary to audit an account belonging to a client in order to ascertain the income of the solicitor himself or his firm for the purpose of imposing tax on the solicitor or his firm. There has been no credible reason accorded for seeking to sight a third party’s accounts in order to impose tax on the solicitor or the firm.

- (4) On the issue of the statutory construction to be adopted when construing section 142(5) of the Income Tax Act and section 126 of the Evidence Act, we are of the clear view that section 142(5)

of the Income Tax Act does not oust section 126 of the Evidence Act.

- (5) Therefore, the contents of the client's account which relates to accounts and monies belonging to the client are covered by solicitor-client privilege. It is therefore, not open to a solicitor to divulge or make available the contents of the client's account to the Inland Revenue by reason of section 126 of the Evidence Act. That privilege belongs to the client and not the solicitor. It requires the client to waive the privilege in order that the solicitor may make available the content of the client's account to the Inland Revenue.
- (6) This privilege conferred by section 126 of the Evidence Act is of course subject to the proviso. This in turn means that where there is an illegal activity or act or omission which comes to the knowledge of the solicitor he is not bound by the privilege but bound to report the illegal activity. This provides sufficient safeguard against persons trying to illegally evade the imposition of tax.
- (7) The purpose and object of the Income Tax Act is to impose tax. That is premised on documentation given by the taxpayer. Where there is a clear misleading statement or fraudulent attempt by the taxpayer, here the solicitor or firm of solicitors, that points to other sources of income which has come to the notice of the Inland Revenue, this provision would come into play. But it

envisages a situation where there is some basis to enable the Inland Revenue to do so. Not as a fishing expedition to go through all accounts of taxpayers with a view to imposing tax.

- (8) Section 142(5)(b) can only be read with and in conjunction with section 142(5)(a). And that in turn means that solicitor-client privilege is expressly preserved save for the limited purposes of section 142(5)(b). And (b) firstly refers to persons other than advocates and solicitors; secondly it makes no inroads into section 142(5)(a) or Part IX of Chapter 3 of the Evidence Act.
- (9) So, far from encroaching on the solicitor-client privilege, section 142(5)(a) and (b) preserve solicitor-client privilege but ensure that a person cannot utilise 'privilege' to escape or prevent the Inland Revenue from procuring evidence of a receipt or payment out of monies contained perhaps in a series of banking transactions or receipts, simply because they are stored in a client's account.
- (10) Ultimately, in relation to question (a) our answer is no or in the negative; with respect to questions (b) and (c), first, we say that the questions are too general as in every case it is necessary to identify the particular document or statement in issue. However, it would prima facie fall within the privilege conferred by section 126 of the Evidence Act. As for question (d) we concur with the Court of Appeal that the term 'practitioner' does not include an advocate and solicitor.

(11) In the circumstances, the appeal is dismissed with no order as to costs.

Dated: 20 July 2022

(TENGGU MAIMUN BINTI TUAN MAT)

Chief Justice,
Federal Court of Malaysia

(NALLINI PATHMANATHAN)

Judge,
Federal Court of Malaysia

(VERNON ONG LAM KIAT)

Judge,
Federal Court of Malaysia

(HARMINDAR SINGH DHALIWAL)

Judge,
Federal Court of Malaysia

(RHODZARIAH BINTI BUJANG)

Judge,
Federal Court of Malaysia

(MOHAMAD ZABIDIN BIN MOHD DIAH)

Judge,
Federal Court of Malaysia

(HANIPAH BINTI FARIKULLAH)

Judge,
Court of Appeal Malaysia